IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1947.

No. 90

PEOPLE OF THE STATE OF ILLINOIS ex rel.,
VASHTI McCOLLUM,

Appellant,

vs.

BOARD OF EDUCATION OF SCHOOL DISTRICT No. 71, CHAMPAIGN COUNTY, ILLINOIS, and ELMER C. BASH and ALICE J. BASH, and WANDA I. BASH, a minor, by ELMER C. BASH, her father and next friend,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF OF ATTORNEY GENERAL OF ILLINOIS AS AMICUS CURIAE.

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ARGUMENT

I.

The Record Does Not Disclose Any Violation of the Constitution of the United States.

The Constitution of Illinois, as expounded by her Supreme Court, inhibits the *compulsory* hearing or reading on the part of school children of any version of the

Bible; and this is true even though such reading, by the pupil or by his teacher, is unaccompanied by any interpretation of or other commentary on the text. *People ex rel. Ring* v. *Board of Education*, 245 Ill. 334. In short, Illinois forbids the compulsory presentation of the Bible in the public schools, even as a literary document only.

But appellant would read the Fourteenth Amendment as categorically prohibiting the instant Board of Education from even permitting the purely *optional* study of the Bible by any child upon publicly-owned school property during school hours.

Illinois' Attorney General asks this Court to consider the implications of appellant's proposition the more carefully because it embodies an interpretation of the Fourteenth Amendment that has never before, so far as we are aware, found utterance upon the part of any litigant in this Court in the history of the Union and because it is opposed to scholastic traditions throughout the nation that are older than the federal or any state constitution.

The Bible is all but universally recognized as of prodigious literary and historical importance in the world's culture. It has informed and inspired the art and letters of the world's civilizations for thousands of years.

But if appellant's constitutional thesis is correct, although children may be compelled to study the history of the Western World, a history that has been dominated in many of its aspects by the writings in question, nevertheless they may not be even *permitted*, much less compelled, to read those writings themselves on school property. And this is true, according to appellant, notwithstanding the fact that the parents (whose responsibility for their children's tutelage must remain primary among a free people) desire that their children be tutored in this great literary work.

A pupil may be compelled to read *Paradise Lost*, *Pilgrim's Progress* and the *Ode on a Grecian Urn*. Since the *Ode on a Grecian Urn* refers to Greek and not to Christian or Judaic religious themes, he may be compelled to learn the classical theology of Greece and Rome. But he may not be even allowed, much less required, to read as a part of his school work any part of the writings that form the basis of allusion in *Paradise Lost*, *Pilgrim's Progress*, much of the poetry of Shakespeare or almost any of the countless other literary works that comprise the elements of a liberal education.

A child may be compelled to take a course in the artistic masterpieces and may be required to study Leonardo da Vinci's "*The Last Supper.*" But appellant says that he must not within the precincts of the public school hear the story that da Vinci has set upon canvas.

This most extraordinary conception of constitutional law (and of the elements of a liberal education) is proposed in the name of "tolerance," "liberty of the mind," and "freedom of education."

The very fact that in many states the Bible is regularly taught as a part of public school curriculum embodies a practical and actual construction of the Fourteenth Amendment by the states themselves; and since it is the states that ratified this amendment and to whom its prohibitions are directed, a wide consensus on the part of the state authorities tolerating a reading of the Bible should, we submit, receive a very respectful (although of course not controlling) consideration upon the part of this Court. *Had the State Legislatures been told that their ratification of the Fourteenth Amendment would proscribe the voluntary reading of the Bible on school property, it is very doubtful that that amendment would have been adopted at all.*

If appellant's constitutional doctrine is correct, a state university may not give a course in Biblical letters or even a course in comparative religion if the Bible is one of the texts.

Illinois' Attorney General briefly but strongly emphasizes the historical demonstration developed in appellees' brief (pp. 94-100) that Thomas Jefferson himself was the author of a plan for voluntary religious education upon the publicly-owned grounds of the University of Virginia; and that this plan found approbation in the times and among the people who wrote and ratified the First Amendment.

The important question as to whether the Bible may comprise a part of the elective curriculum of the public schools should, we submit, be left to the states, whose governments are, with this Court, custodians of constitutional liberty and guardians of civil rights.

The Illinois Supreme Court's holding that appellant cannot *as a taxpayer* prevent in this suit the infinitesimal expenditure of taxes theoretically involved is, we submit, conclusive here so far as appellant seeks to ground her suit upon a right to prevent the disbursement of public funds; for the court's holding goes to the remedy and procedure only, namely, a "taxpayer's suit."

II.

Appellant, Having Sought Nothing Less Than the Total Prohibition of the Teaching of the Bible in the Public Schools of Illinois, Is Not Entitled to Have This Court Consider Any Less Complete Abridgment or Modification of the Champaign Plan Than Such Total Prohibition.

The prayer of appellant's petition, *totidem verbis*, is as follows:

> "Wherefore, petitioner prays this Honorable Court to issue a writ of mandamus to the Board of Education of School District Number 71, Champaign County, Illinois, ordering it to immediately adopt and enforce rules and regulations prohibiting *all* instruction in and teaching of religious education in all public schools in Champaign School District Number 71, Champaign County, Illinois, and in all public school houses and buildings in said district when occupied by public schools." (Tr. 17.) (Emphasis supplied.)

Appellant thus sought the total extirpation of the Bible from public school premises except, perhaps, as a book on the shelves of a school library. (But it is not at all clear that even the mere presence of the Bible in a school library where it would be accessible to children would not violate appellant's extraordinary notions of "Freedom of Conscience.")

She sought no writ to be framed in terms less drastic than total suppression of the Bible as reading matter in the school curriculum. She did not ask, for instance, a writ which would prohibit merely the alleged "censorship" of *personnel* or content of instruction under sectarian auspices. She prayed no modification of the plan that would relieve it of any of the specific and particular features, other than teaching the Bible, of which she complains.

The only question that she raised and presented is the following:

> May the voluntary instruction in the Bible under any auspices, and under any plan, so long as the reading occurs "in the public school building," be totally and absolutely interdicted?

Once it is perceived that appellant demanded the total closing of the Bible in the public schools, seeking and therefore being entitled to nothing less, it will, we submit, be apparent that the particular details of the Champaign plan are not in question here in any focus more specifically circumscribed than that intended by a general attack upon the reading of the Bible in the public school under any circumstances.

Conclusion.

For the reasons urged in appellees' brief and in the instant brief, the Attorney General of Illinois submits that the judgment appealed from should be affirmed if this cause is not dismissed for want of jurisdiction upon reconsideration of appellees' motion to that end.

Respectfully submitted,

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